



## Calgary Assessment Review Board

### DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Artis Stampede Ltd., COMPLAINANT  
(as represented by Fairtax Realty Advocates Inc.)***

and

***The City Of Calgary, RESPONDENT***

before:

***I. Weleschuk, PRESIDING OFFICER  
B. Jerchel, BOARD MEMBER  
D. Steele, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201485927</b>
<b>LOCATION ADDRESS:</b>	<b>1331 Macleod Trail SE</b>
<b>FILE NUMBER:</b>	<b>74732</b>
<b>ASSESSMENT:</b>	<b>\$86,350,000</b>

This complaint was heard on 3<sup>rd</sup> day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *S. Storey, Agent – Fairtax Realty Advocates Inc.*

Appeared on behalf of the Respondent:

- *C. Fox, Assessor – City of Calgary*

**Procedural or Jurisdictional Matters:**

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

**Property Description:**

[2] The subject property, known as Stampede Station, is located at 1331 Macleod Trail SE. It is an office building with main floor retail and underground parking (288 stalls), built in 2009, with occupancy occurring in 2009 and 2010. The site is 1.03 acres. The total assessable area is 162,506 square feet (SF). This is one of a handful of new office buildings in the Beltline District, and is assigned a quality rating of AA Office. The building has been 100% occupied since it opened.

[3] The 2014 property assessment is done using an Income Approach, applying the factors as shown in the table below. The net operating income (NOI) for this property is calculated as \$4,749,724. The capitalization rate applied is 5.50%. The resulting assessment is \$86,350,000 (rounded).

Sub-components	Area (SF)	Rental Rate (\$)	Vacancy Rate %	Operating Cost (\$/SF)	Non-recoverable %
Bank	3,431	45/SF	8.00	12.00	1.00
Fast Food Restaurant	1,884	32/SF	8.00	12.00	1.00
Office Retail Space	3,152	30/SF	8.00	12.00	1.00
Office Space BL2	147,691	25/SF	1.00	13.00	1.00
Restaurant Space 6000+	6,344	28/SF	8.00	12.00	1.00
Underground Parking	288 stalls	2,580/stall	2.00	0.00	1.00

**Issues:**

[4] The Complainant raised one issue related to the 2014 Assessment Income Approach Valuation. The Complainant's position is that the 2014 Property Assessment is too high because:

- The 1% vacancy rate for the office space component of the subject property is incorrect. The correct vacancy rate is 5% based on typical rates for this space type.

**Complainant's Requested Value:**

**\$82, 874,101**

**Board's Decision:**

[5] The 2014 Property Assessment of \$86,350,000 is confirmed. The Board is not persuaded that the vacancy rate used to prepare the 2014 Assessment is incorrect.

**Legislative Authority, Requirements and Considerations:**

[6] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[7] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

**Issue 1: What is the correct vacancy rate for the office space component?****Complainant's Position:**

[8] The Complainant presented Exhibit C1, which summarized and presented the calculation for the requested assessment (page 4) using a vacancy rate of 5% for the office space. The other factors used to prepare the 2014 Assessment using the Income Approach were not in dispute.

[9] The Complainant argued that the vacancy rate should represent the typical vacancy that the subject building will experience over its lifetime. The Complainant acknowledged that the building is currently fully leased, and stated that this is typical for new buildings. However, as a building ages and as the initial leases expire, vacancy will increase. Tenants will come and go over the life of the subject building for various reasons, which will result in a vacancy rate considerably greater than the 1% used by the City in preparing the 2014 Assessment. The Complainant stated that appraisals of office buildings use a vacancy rate of at least 3%. As this is an investment grade property, potential purchasers will analyze the market and the tenant mix and use a vacancy rate that reflects the expected or future vacancy in determining what they can or should pay for the property. A number of definitions of vacancy rate and how it should be derived or applied were presented in Exhibit C1.

[10] To support the requested vacancy rate of 5%, the Complainant presented the First Quarter 2013 CRESA Calgary Downtown & Beltline Office Market report, and noted that the Beltline Office Vacancy rate, derived from information from 41 office buildings in the Beltline District, was 5.41% (page 10, Exhibit C1). The Complainant stated that this represented all office buildings in the Beltline, of various sizes, qualities and age of construction. The 5.41% vacancy represented the typical rate that an office building can expect over its lifetime, and therefore is the correct vacancy rate to use in the Income Approach for the 2014 Assessment..

[11] The Complainant also presented excerpts from the Avison Young Office Market Report Q2 2013 and Q3 2013 to further support the position that the vacancy rate for offices in Calgary's Beltline District is at least 5% (11.1% in Q2 2013 and 9.0% in Q3 2013).

[12] With regard to the City's vacancy analysis (page 60, Exhibit R1), the Complainant noted that it is derived from a total population of six buildings and that all these buildings were constructed in the last five years, therefore it would be expected that their vacancy early in their lifetime would be low. But the current low vacancy is not sustainable. A party considering purchasing the property would not use the current, low vacancy in its valuation analysis because a vacancy of 0% or 1% is not realistic over the life of the building.

[13] When asked, the Complainant did not know the detailed methodology used by either Cresa or Avison Young to derive their vacancy rate, but noted that these are data sources relied on by the industry and the City for real estate market information.

**Respondent's Position:**

[14] The Respondent's position, supported by Matters Relating to Assessment and Taxation Regulation (MRAT) is the assessment is prepared annually, must reflect typical market conditions for similar properties and must be an estimate of value as of July 1 of the assessment year. Therefore, each assessment year is a new exercise in valuation, based on the data compiled for that assessment year.

[15] The vacancy rate used to prepare the 2014 Assessment is based on the City's 2014 Beltline AA Office Vacancy Analysis (page 60, Exhibit R1) and reflects the typical market conditions for this property type as of the valuation date. The Respondent noted that the 4.787 SF of vacancy shown for the property located at 1100 1 St SE is actually retail space, not office space, based on a review of the Assessment Review for Information (ARFI). Exhibit R1 also includes support information for each of the six lease comparables used in the vacancy analysis, including an ARFI showing their respective vacancy rates. Based on this analysis, the City derived a vacancy rate of 1% for this property type.

[16] The Respondent included the Cresa data presented by the Complainant, highlighting the AA Office Buildings to confirm that the Cresa data also shows these buildings having 0% vacancy.

[17] The Respondent also noted that the requested assessment is within 5% (about 4%) of the 2014 Assessment. Based on its interpretation of *Bental Retail Services et al v. Assessor of Area No. 9 – Vancouver 2006 BCSC 424* and some previous Board decision, the Respondent stated that the Board should dismiss the complaint as the requested assessment and 2014 Assessment values are "within an acceptable range of the actual value".

**Findings of the Board**

[18] The only issue before the Board is the vacancy rate applied to the office portion of the subject property, and whether the vacancy rate used by the City to derive the 2014 Assessment is correct. Both parties raised the issue of equity or fairness in answers to questions or in argument, but both parties acknowledged that equity is not an issue before this Board.

[19] The Complainant presented third party evidence (Cresa and Avison Young Office Market Reports) to support its position that the correct vacancy rate is 5%. The Complainant was not able to provide any information on how these reports are prepared, but acknowledged that they include all office buildings in the Beltline District. The Respondent presented its 2014 Beltline AA Office Vacancy Analysis. While the Respondent's Analysis consists of only six properties, this group of properties is similar and similar to the subject. This group of new office properties has a very low vacancy rate. Based on the evidence presented, the Board accepts a vacancy rate of 1% as reflecting the current and typical vacancy rate for this group of office properties. The Board notes that industry reports are generally useful to support an analysis, but are not typically sufficient evidence to establish a specific rate for a factor used in an Income Approach.

[20] The Board heard the Complainant's argument that a vacancy rate should reflect the future, or expected or lifetime vacancy of a property, not the current or actual vacancy at a point in time. This argument is valid in circumstances where a party is considering purchasing a property or doing an investment analysis on a property, but that is not the purpose of an assessment. An assessment must reflect the market value of the property as of the valuation date. The factors that go into that assessment calculation change from year to year, to reflect the current, typical market conditions for that property type. Furthermore, the Complainant's evidence demonstrates that the vacancy rate for Beltline Office properties changes from quarter to quarter. Even if the Board accepted the premise that a vacancy rate should reflect the lifetime vacancy of a property, the evidence presented by the Complainant did not establish the quantum of such a factor.

[21] With regard to the Respondent's position that because the requested assessment is within 5% of the 2014 Assessment therefore the Board should not hear the complaint, the Board notes that this interpretation is considerably out of context. The Respondent used an excerpt (page 4, Exhibit R1 and underlined below) from the following clause of the *Bental Retail Services et al v. Assessor of Area No. 9 – Vancouver 2006 BCSC 424* Decision:

*"[96] The Respondent has provided me with summaries of 27 previous Board Decisions dealing with the question of range of values. While there have been some exceptions, the vast majority of these cases suggest an approximate range or plus or minus 5% of assessed value as being within an acceptable range of actual value."*

The Board notes that the court is merely making a statement of fact in this clause, not offering direction. Further, the decision reads:

*"[98] In finding that the values in the Assessment Rolls are actual values, despite slight differences between those values and the Board's own calculations, the Board applied the concept of a "range of values" constituting actual value, which is an established part of the law of assessment. It applied this concept correctly, when assuming that its erroneous evaluations were correct. It also applied this concept, again correctly, when the error was acknowledged and the Amended valuations were accepted as correct."*

Clause [98] in the Decision refers to one of the issues before the court, which related to an error in calculating the assessment by the Board in its decision, related to a very specific set of facts and circumstances. To suggest that the Bental Decision directs the Board to dismiss complaints with a requested assessment within 5% of the assessed value is absurd. Section 460 of the Act defines the issues that can be the subject of a property assessment complaint. Section 460.1 gives the Board the authority to hear those assessment complaints. If the complaint is valid and done in accordance with the Act and Regulations, the Board has the authority and responsibility to hear that complaint. There is no authority to dismiss a complaint simply because the requested assessment is within 5% of the assessed value.

[22] The Board is not persuaded by the evidence presented by the Complainant that the vacancy rate for the office component used to prepare the 2014 Assessment using the Income Approach is incorrect. The Board prefers the vacancy rate analyses presented by the Respondent. For this reason, the Board confirms the 2014 Assessment.

**Board's Reasons for Decision:**

[23] The 2014 Property Assessment of \$86,350,000 is confirmed. The Board considered the office vacancy rate evidence presented by the Complainant and is not persuaded that the vacancy rate assigned to the subject office space component used to prepare the 2014 Assessment is incorrect. The vacancy rate analyses presented by the Respondent supports the vacancy rate used to prepare the 2014 Assessment.

DATED AT THE CITY OF CALGARY THIS 15<sup>th</sup> DAY OF July 2014.



**I. Weleschuk**  
**Presiding Officer**

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

**For MGB Administrative Use Only**

<b>Subject</b>	<b>Type</b>	<b>Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Office	Beltline AA Quality Office	Vacancy Rate	